No. 12142

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CANNON MANUFACTURING CORPORATION AND JAMES H. CANNON, AN INDIVIDUAL DOING BUSINESS AS CANNON ELECTRIC DEVELOPMENT COMPANY, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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AUTHORITIES CITED

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JURISDICTION

This proceeding is before the Court on petition of the National Labor Relations Board for enforcement of its order issued against respondents on December 16, 1946 (71 N. L. R. B. 1059; R. 106–115), pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. Sec. 151, *et seq.*), herein called the Act.[1] The jurisdiction of the Court is based upon Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C.

[1] Relevant portions of the Act and of other statutes referred to herein appear in the appendix, *infra*, pp. 56–58.

Supp., Sec. 141, *et seq.*),[2] the unfair labor practices having occurred at respondents' place of business in Los Angeles, California, within this judicial circuit.

STATEMENT OF THE CASE

The Board's order is based upon findings[3] (R. 4–10, 18–94) that respondents dominated and interfered with the Contact Committee and the Cannon Employees Association and contributed support to these organizations in violation of Section 8 (2) of the Act; that respondents discriminatorily discharged 11 of their employees in violation of Section 8 (3) of the Act, thereby discouraging membership in the United Electrical, Radio and Machine Workers of America, CIO, and in the International Association of Machinists, Lodge 311, and encouraging membership in the Cannon Employees Association;[4] that respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (1),[5] and that

[2] The 1947 amendments to the National Labor Relations Act made no change in the provisions of the original Act which would affect the validity or enforceability of the Board's order in this case. See note 23, p. 51, *infra*.

[3] The Board in its decision adopted the proposed findings of facts, conclusions of law and order which it had previously issued on July 1946 (R. 18–104), with certain additions and modifications expressly noted in the decision (R. 4–10).

[4] These three organizations will be frequently referred to herein as the UE, IAM, and CEA, respectively.

[5] The Board dismissed the complaint insofar as it alleged that respondents had discriminatorily discharged Gus Palm, Louis Tournie, and Louis LaGuerre Drouet (R. 16–17).

these unfair labor practices affected commerce within the meaning of Section 2 (6) and (7) of the Act. The Board ordered respondents to cease and desist from the unfair labor practices found, to cease giving effect to its contract with the Cannon Employees Association, to withdraw recognition from and completely disestablish the Cannon Employees Association, to reimburse all employees whose dues in the Cannon Employees Association respondent had checked off for the amounts thus deducted since February 15, 1945, and to refrain from recognizing the Contact Committee as the collective bargaining agency of their employees in the event that organization should return to active existence (R. 11–13). The Board's order further required the respondents to offer reinstatement with back pay to the 11 employees discriminated against and to post appropriate notices (R. 13–16).

A. The Board's findings as to the business of respondents

Respondent, Cannon Manufacturing Corporation, herein called the Corporation, is a California corporation having its principal office and place of business in the City of Los Angeles, California (R. 138–139). Respondent James H. Cannon, an individual, doing business under the trade name Cannon Electric Development Company, herein called the Company, who designs and engineers all products of the Corporation and sells its products, likewise has his principal office and place of business at the same address in the

City of Los Angeles, California (R. 138–139, 143–149).[6]

B. The Board's findings and conclusions as to respondents' unfair labor practices

1. Early labor relations history; accompanying interference, restraint, and coercion

Respondents early manifested hostility to the union organization of their employees. Although, in 1937, the Corporation, then known as the Cannon Electric Development Company,[7] had entered into an agreement with the International Brotherhood of Electrical Workers, in spring of the following year when

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[6] The Corporation manufactures cable connections and electric specialties. During the calendar year ending December 31, 1944, the Corporation purchased materials valued in excess of $3,000,000, of which approximately $500,000 originated outside California. During the same period its entire manufactured products valued at approximately $7,000,000, was sold to the Company. During 1944, the Company's sales of the Corporation's products exceeded $7,000,000 in value. Approximately 15 percent of the sales were made directly to the United States Government and 70 percent thereof to aircraft companies having Government contracts, a substantial percentage being shipped to points outside California (R. 139–143). James H. Cannon, president of the Corporation and sole owner of the Company, takes an active part in the management of both enterprises. Upon the facts conceded by respondents (R. 139–151), it is clear that both respondents are subject to the Act.

[7] In 1915, James H. Cannon founded the Cannon Electric Development Company (R. 143–145). Subsequently in 1920, the business was incorporated and continued to operate under the name of Cannon Electric Development Company until 1939 when the name was changed to Cannon Manufacturing Corporation (R. 144–145). At this time, James H. Cannon registered the Cannon Electric Development Company as the trade name of a sole proprietorship which, as indicated hereinabove, became the engineering and sales agency of the Corporation (R. 141, 144–146; *supra*, n. 6).

the International Association of Machinists sought to bargain on behalf of the employees,[8] President James H. Cannon engaged in a correspondence with the IAM in which he clearly disclosed his antipathy to the organization of his employees by an "outside" labor union (R. 28; 155, 636–647).[9]

With respect to a tentative agreement which the IAM sent to him for consideration, President Cannon declared in the ensuing correspondence that he was unable to "see why a few disgruntled employees or the ambitions of an outside organization should be permitted to disrupt the Company and if it comes to a showdown we know we can replace every man in the place with men of equal ability and in many cases more or at least equal loyalty with the men now employed without any increase in wages" (R. 636–637).[10] He stated that "in view of the attitude that is apparently manifest," the Corporation, if pressed too far, would "make it a policy to simply lay off men when work is caught

[8] The organization of the International Brotherhood of Electrical Workers among the employees of the Corporation ceased to exist at some time shortly before the IAM sought to represent the employees for the purposes of collective bargaining (R. 56, 58–59).

[9] Record references preceding the semicolon are to the Board's findings; those following are to the supporting evidence. Exhibits which have not been printed but have been filed with the clerk pursuant to stipulation (R. 132–133) are designated "Bd. Ex." or "Resp. Ex."

[10] At this time, the Corporation had between 40 and 55 employees (R. 206, 645). Subsequently, the Corporation's force of employees greatly increased and at the time of the hearing, there were approximately 1300 employees on the Corporation's pay roll and 200 on that of the Company (R. 149–150).

up rather than try to promote new activities to keep them employed," as had been the Corporation's practice. President Cannon categorically stated that the Corporation was "not signing any agreement" and he concluded the letter with the statement that it was beyond his comprehension "why [the employees] * * * desire at this time to bring on tragedy, which any undue activity will result in, but inasmuch as what [the Corporation has] * * * done in the past year for their benefit does not seem to produce any lasting results there is no alternative except to bring it to a show-down at the present time and conclude the matter definitely and for all times" (R. 643).

In a subsequent letter he asserted that he was "endowed with sufficient 'intestinal fortitude' to tell any outside labor organization that tries to 'horn in' and disorganize the workers, to go to hell" but that he "would welcome the organization of employees into a group, represented by an accredited committee, authorized to meet with the management to discuss problems of mutual interest or grievances" (R. 646). Finally, he advised that the 34 union employees who were referred to in the letter of the IAM business agent might "draw their time, at any time they may see fit, and not wait 60 days for the ultimate decision" since there were "too many able mechanics who would be delighted to obtain employment with this organization to warrant wasting further time in discussing the formation of a clique

that could dominate the operation of this business over the will of the management" (R. 646).

At about the time of the foregoing correspondence, plant superintendent Roy Cromwell during working hours requested employee Alvin George to attend a meeting of the IAM that evening in order to "find out what was going on" and to "get in with the rest of the boys" (R. 205). George attended the meeting and on the following day Superintendent Cromwell questioned him as to the number of employees who had attended the meeting, the names of the leaders and principal speakers, and the nature of the business conducted at the meeting (R. 206–207).

Although thereafter in June 1938, the IAM obtained an agreement from respondents (Resp. Ex. 37, R. 156–157), the grievance committee called for by the agreement did not function either in 1939 or 1940, and insofar as the record shows, there was no IAM organizational activity among the respondents' employees after 1938 (R. 158–159).

2. Respondents' domination and support of employee organizations; accompanying interference, restraint, and coercion

a. *The Contact Committee*

Following a vast increase in personnel in the early months of 1941, which coincided with the commencement of organizational activity by UE among the Corporation's employees, respondents about May 20, 1941, distributed among the employees a letter signed by President James H. Cannon advocating the establishment of the Contact Committee for the purpose of

tact Committee coincided with organizational activity on the part of UE, but a marked disparity is evident in respondent's treatment of the two rival labor organizations. On May 28, 1941, 8 days after his first letter advocating the formation of the Contact Committee to handle grievances, President Cannon refused a request of UE to discuss employee grievances, suggesting that employees with grievances proceed through the long-since inactive IAM (R. 566, 704–706). In a letter to the employees dated June 3, 1941, President Cannon declared that the employees "were given the opportunity to work out * * * (their) own destiny by intelligent selection of the Contact men" and he stressed that "no organization will dictate * * * (respondents') policies from the outside" and that the plant would "never be operated as a 'closed shop' by any organization as long as * * * (he owned) it" (R. 166, 658–660).[12]

On June 11, 1941, President Cannon assured the employees in a letter that respondents would meet with the Contact Committee, cooperate with it, and do "everything possible to make it a success" (R. 164, 665–667). He further declared that respondents would receive any "legal complaint" through the IAM, which, as previously indicated, was not then functioning as an organization of the Corporation's employees

[12] Testifying at the hearing concerning his prior contract with the IAM, President Cannon admitted that he "claimed" he "would never sign a closed shop contract where there was an outside affiliation" (R. 197). His opposition to closed shop contracts with the IAM and UE stands in marked contrast with his subsequent execution of a closed shop contract with the Company-assisted and dominated CEA (*infra*, pp. 20–21).

(R. 604, 656; supra, p. 7.) The letter, however, contained no reference to the UE, which was seeking to establish a grievance procedure with respondents. On June 18, 1941, two days after the UE had sent respondents a letter outlining a specific grievance procedure, President Cannon, again addressing the employees, asked them for an expression of their desires concerning the Contact Committee. In the letter he stated that the "enclosed" penny post cards were distributed to the employees for the purpose of giving them the opportunity "to inform me if you so desire, that you first want the opportunity to work out your own problems" through the Contact Committee and "that until this plan is found wanting in results you are not desirous of outside interference that could easily prove disastrous" (R. 166–167, 629, 661–663). On the penny post card addressed to President Cannon was printed the statement that the undersigned employee wanted to give the Contact Committee opportunity to function "with a view to increasing production to make possible increased wages" (R. 661).[13]

In subsequent correspondence with the UE which respondents distributed among the employees, President Cannon reiterated his refusal to meet with representatives of the UE asserting, *inter alia,* that a majority of the employees had selected the Contact Committee to take care of their interests (R. 173, 663–667). He further demanded that the UE "make

[13] Also printed on the card was the statement that the undersigned understood that "this expression" would not interfere with his membership in any union and that he expected the Contact Committee to correct "reasonable grievances" (R. 661).

good" its charges that respondents had acted illegally under the Act or that it "quit harassing and trying to spread discontent among my employees" (R. 666–667). Concluding a letter dated July 3, 1941, President Cannon declared to the UE that "there is no need of paralleling the work of the present Contact Committee" (R. 667). Some few days thereafter on about July 8, 1941, in another letter distributed to the employees, he praised the Contact Committee and asked the employees to give it "a fair break" (R. 174–176, 667–670).

The Contact Committee remained in existence for about 3 months (R. 505). During the Committee's period of active existence, it met a number of times to consider employee grievances (R. 500–501). The meetings were held in the plant conference room on the swing shift and were attended by either President Cannon or his son, Vice President Robert Cannon (R. 501). The Committee had no constitution or bylaws and respondents' letter of May 20, 1941, advocating the establishment of the Committee which provided the sole basis for its organization, made no provision for dues, membership, or meetings of employees (R. 647–654). Employee participation other than by the Committeemen was limited to the election of the Committee members (*ibid.*).

The Contact Committee continued in active existence until sometime in September 1941 (R. 507–508). At that time pursuant to the suggestion of employee Ned Mandella who had already started the organization of the CEA, considered hereinafter (*infra,* pp. 13–32, the Committee met in the plant conference

room and voted to disband (R. 507–508). Although President Cannon, as he testified at the hearing, had then been informed that the Contact Committee was illegal under the Act (R. 603–604), the record contains no evidence that respondents took any steps to advise the employees of that fact or to disestablish the Committee (R. 603–605).

Upon the foregoing facts the Board concluded that the Contact Committee "was a creation of the respondents in its entirety," and that respondents by dominating, interfering with, and supporting the organization and administration of the Contact Committee violated Section 8 (2) of the Act (R. 5, 32).

b. *The Cannon Employees Association*

(1) Formation

The organizational activity which resulted in the formation of the CEA commenced some time in January 1941, immediately after the UE started its organizing campaign among respondents' employees (R. 208–210, 480–482, 542). On the day following the first appearance of the UE's sound truck in front of respondents' plant, Ned Mandella, a tool crib attendant, commenced soliciting employees to sign a petition which he had at the tool crib (R. 208–210). In its original form, the petition frankly stated that its purpose was "to keep out the CIO" and Mandella obtained the signatures of a number of employees to the petition as thus drafted (R. 210). Later, however, this heading was changed and the petition set forth as its purpose the formation of the Cannon Employees

Recreation Association, herein known as the CERA, to sponsor recreational activities among the employees (R. 210, 425–427, 480–481). Mandella vigorously solicited employees in the plant to sign the petition and a substantial portion of his organizational activity and solicitation occurred during working hours (R. 209–212, 216–217, 258–260, 425). He enlisted the assistance of other employees in forming his new organization and these likewise conducted their organizational activity in substantial measure during working hours (R. 264–267, 481–486).

Typical of the persistent character of the solicitation in which Mandella engaged were Mandella's repeated requests to employee Alvin George to sign the petition and join the CERA. On the first day of his activity, Mandella asked George at the tool crib during working hours to sign the petition "to keep out the CIO" which already contained a number of names (R. 210). George refused, expressing his belief that Mandella might "get himself into trouble" circularizing such a petition on company time and property (R. 210, 212). Mandella renewed his request later that same day and thereafter was "continually approaching" George (R. 216) to "sign up," even promising him "any office in the organization * * * outside of president" (R. 210–212, 215–216).

Respondents knew of Mandella's activities in this respect shortly after they began, and Cromwell, respondents' plant superintendent, approved and gave direct aid to Mandella's organizational efforts "to keep out the CIO." Thus, within a week or two after Mandella had commenced his solicitation, Cromwell

called George to his office and asked him why he had not joined the organization "they were forming" (R. 212–213). He assured George that Mandella's activity "was all right, the company knew about what he was doing" (R. 213). Cromwell explained to George that "it was to be a company union and that he would see that the right men got the right jobs in it, they would be given the proper training" (R. 214). Finally, Superintendent Cromwell made an outright request that George "join up" (R. 214).

Respondents gave other effective support to Mandella's organization during its early days. Within a few weeks after Mandella began his activities, a bulletin board was erected in the plant in front of Plant Superintendent Cromwell's office (R. 427). On it were posted notices and bulletins announcing the holding of an election for officers, the progress of the CERA, and listing the candidates competing in the forthcoming election (R. 261–262, 277–278, 427–428). Mandella had selected the candidates, and the list of names remained on the bulletin board for approximately one week (R. 261–262). Running against Mandella as a rival candidate for election as "head of the Association" was foreman Herb Elgin (R. 427). The election itself was held in the plant during working hours. Some ballots were distributed in the departments among the employees and others were put on a table placed between Superintendent Cromwell's office and the plating department in the plant (R. 262–263). Employees marked the mimeographed ballots and dropped them into the ballot box which stood on the table where the ballots were made available (R.

263). The election continued during an entire afternoon and the employees left their work to vote and place their marked ballots in the box (R. 263). Several employees counted the ballots in the plant (R. 263–264). Mandella and six other employees were elected as officers (R. 264). After the election, solicitation of employees to join CERA continued in the plant during working hours (R. 264–265).

The newly elected president and board of directors held three or four meetings between the time of their election and April 1941 (R. 274, 276), and four or five membership meetings were also held (R. 276). Despite its name, there is no evidence in the record that CERA in fact organized any recreational facilities for the employees or that questions relating to such matters were considered at these meetings. During February, however, the CERA officers aided by an attorney, one Lewis, had drafted and filed with the California State authorities Articles of Incorporation of the Cannon Employees Association, a nonprofit corporation, herein known as CEA (Resp. Ex., 38A, Bd. Ex. 35, R. 279–281). The Articles authorized the CEA to engage in welfare and recreational activities and "to act as a labor organization" (Resp. Ex. 38A).

The newly incorporated CEA was merely the continuation under a different name of the CERA which Mandella had first promoted in January 1941 "to keep out the CIO" (*supra,* p. 13). James H. Cannon himself testified that "CEA started to organize" as CERA (R. 603). As noted above, the CERA officers and directors, aided by the CERA attorney

Lewis, prepared and filed the Articles. All seven officers and directors of CERA, within a few weeks after the election and as of February 28, 1941, signed the Articles as incorporators and officers of CEA (Resp. Ex. 38A). The same seven subsequently prepared and voted for certain amendments to the Articles which they signed as of March 31, 1941 (Resp. Ex. 38B). Thereafter, in April 1941, the CERA officers and directors voted to change the name from CERA to CEA in order "to keep out the CIO" (R. 275, 279–280, 282–283), the precise purpose which had inspired Mandella's original effort to form CERA (*supra,* p. 13). No election, however, of officers for CEA was held and with the exception of two directors who resigned, "the Board of Directors of CERA continued to act as the governing body" of CEA (R. 35; 279–280). Mandella, who continued as president of CEA, appointed two employees to serve as directors in place of those who resigned (R. 280). CEA retained as its attorney Lewis, who had served CERA as its attorney, attended meetings of the CERA Board, and helped prepare the CEA Articles of Incorporation for the CERA officers (R. 274, 280, 282). Moreover, CEA used CERA membership cards to record the dues payments of CEA members as late as July 1941 (R. 490–491, Bd. Ex. 34, 42).

(2) Respondents' interference with, support to, and domination of CEA prior to the Board-conducted election of January 1943

Following the organizational steps described above, CEA and UE engaged in rival campaigns for the

allegiance of the employees which culminated on September 9, 1941, in a Board election to determine the bargaining representative (R. 37, 39–40; 595, 709–710).

During this period respondents continued to permit the organizational activity in which CEA officers and adherents engaged on company time and property. At the request of Mandella, employee Monjar actively solicited her coworkers to join CEA during a period of about two and a half months beginning at the end of May 1941 (R. 344–349). She turned in lists of new members and dues which she collected to employee Olsen, secretary of CEA, while the latter was at work and received from Olsen membership cards for distribution to the new members (R. 348–353). Although Olsen's foreman, Gervasi, on several occasions, observed this CEA organizational activity in his department, he took no steps to exclude Monjar, who worked elsewhere in the plant, from his department or to put a stop to the activity of Olsen and Monjar (R. 352–353). On about August 15, 1941, respondents issued a booklet for its employees entitled "Employee Information and Regulation," which provided, *inter alia,* that employees were not to solicit membership in any organization "during working hours or on company property" (Resp. Ex. 34). Both CEA and UE, however, continued organizational activity on company time and property.

But the promptness and severity with which respondents acted to stop UE organizational activity stands in marked contrast to the tolerance exhibited

to the far more extensive activity engaged in on behalf of CEA. On August 28, two employees asked employee Wiley, UE member and steward who had previously resigned from CERA, about joining the CEA. Although Wiley refused to discuss the matter during working hours, the two employees returned several times and finally Wiley gave them UE membership cards. Ten minutes later Superintendent Cromwell had Wiley called into his office and, without making any inquiry as to the circumstances, discharged Wiley forthwith for engaging in union solicitation on company time (R. 269–271). A few weeks later, however, in September, employee Bereznak during working hours actively solicited employees outside his own department to join CEA and was joined in this activity by the leadman of the department in which he was soliciting (R. 391–392). There is no evidence in the record, however, that respondents took any steps to stop this or other CEA activity occurring in the plant during working hours.

During the week preceding the September 1941 election, moreover, whenever at the change of shifts the UE sound truck appeared before the plant, loudspeakers on the roof of respondents' plant broadcast music with such volume as to prevent the employees from listening to the UE sound truck (R. 354–357). After the truck departed, however, the music died down (R. 355–356). In contrast, on the day before the election, CEA literature was permitted to remain on the time clock in the plant in the immediate vicinity of which a plant guard was stationed (R. 357–358). On

September 8, 1941, the day before the election, Foreman McClung of the finish castings department (R. 343 gave further evidence of respondents' partisanship in favor of CEA by wearing a CEA button at work (R. 357). Further exhibiting respondents' marked bias in favor of CEA, Foreman McClung, on the day after the election, which the CEA won,[14] stated, "Well, we won the election" (R. 358–359).

Immediately following the election, Foreman McClung told employee Clarence Armant while he was at work in the plant not to wear his UE badge any longer and advised him that the election was over and that he had "better join the CEA" (R. 289–290). While he was speaking to Armant, the foreman knocked the UE badge which Armant was wearing to the floor with his pencil (R. 290). On another occasion immediately after the election results were announced on the loud speaker system in the plant, Foreman McClung similarly ordered employee Monjar to remove the CIO pin which she was wearing (R. 359).

On October 24, 1941, respondents and CEA entered into a collective bargaining agreement covering nonsupervisory employees to remain in effect for one year and thereafter subject to termination on 30 days' notice (Bd. Ex. 28, p. 2). Despite President Cannon's earlier pronouncement to his employees, that the plant would "never be operated as a 'closed shop' by any organization as long as" he owned it (R. 660), the CEA agreement required respondents to employ "only

[14] CEA defeated UE by a vote of 370 to 268 (R. 709–710).

members of the (CEA) in good standing"[15] (Bd. Ex. 28, p. 3). As the Board noted (R. 42), there is no evidence in the record that "respondents opposed the inclusion of a union security clause in their contract with CEA." The agreement provided a wage increase for the employees. It contained provisions relating to vacations, overtime, holidays, security, safety, and other conditions of employment. A grievance procedure was set forth in the agreement and CEA representatives were given the right to enter plant premises during working hours "for the investigation of working conditions and/or company-employee relations" (Bd. Ex. 28, pp. 5–6, 13). Finally, the agreement provided that respondents would deduct dues for CEA from employees who agreed to this check-off procedure (Bd. Ex. 28, p. 11).

Respondents' intervention in support of CEA retained its positive character after the September 1941 election. Foreman Drouet served on the CEA's Board of Directors (R. 304–305, 308). Respondents permitted CEA to use the plant premises to elect CEA officials in December 1941 and again in November 1942 (R. 290–296, 394–397, 509–510). On both occasions the balloting was conducted in the plant cafeteria located on respondents' premises (R. 291–292). The 1941 election lasted from 12 noon until midnight (R. 294–295). Four CEA members, including Man-

[15] CEA agreed to accept as members all persons employed by respondents at the date of execution of the agreement who made written application for membership. All new employees were required to file an application for membership "on completion of a ninety-day probationary period" (Bd. Ex. 28, p. 3).

della, served as ballot box watchers during the 12 hours that the polls were open and consequently were absent from their respective shifts during most of that period (R. 293–296). After the polls were closed at about midnight, the CEA watchers and a few other employees brought the ballots up to "Mr. Cannon's conference room" and counted them there (R. 293–294). Shortly thereafter, a run-off election was conducted in the plant cafeteria (R. 291, 293).[16]

Other evidence of respondents' support of CEA and opposition to UE is to be found in the treatment of employee Monjar who, prior to the Board election in September 1941, had changed her allegiance from CEA to UE. In November 1941, Frank Hobart, respondents' employee-relations director who also was editor-in-chief of the Cannoneer, published by the corporation for its employees (R. 372, 574–576), told Monjar, who was a steward and otherwise active in UE (R. 359, 371), that she would have to resign from the editorial staff of the Cannoneer if she continued writing for the "UE-News." (R. 375–377, 575–577). Accordingly, Monjar, who, insofar as the record shows, was the only employee writing simultaneously for both publications (R. 622–624), resigned from the staff of the Cannoneer (R. 377). Hobart's policy, however, not to have writers for the Cannoneer serve on the other publications in the plant at the same time (R. 575–

[16] CEA elections were held in the respondents' plant cafeteria throughout the entire period of CEA's active existence (R. 452, 474, 558). CEA election of officers other than those described hereinabove were held in March 1943, May 1944, and July 1944 (R. 465, 474, 557–558).

577), was not similarly applied to CEA members. Although subsequently six employees who were members of the Cannoneer staff simultaneously contributed to the "CEA News" published by CEA, there is no evidence that in the case of these six specific instances Hobart enforced the policy against these employees requiring them to resign from the Cannoneer staff or to stop contributing to the "CEA News" (R. 620–621, 627).

Inasmuch as the names of these six employees were printed in the issues of the "CEA News," distributed among the employees, as members of the CEA editorial staff (R. 620–621), the Board found (R. 44) that Hobart, who was in charge of respondents' employee relations department, was "fully cognizant of the related activities of his staff" and that "his action with respect to Monjar was discriminatory." Moreover, when in April 1942, Monjar asked Foreman Gervasi for a 4 weeks' leave of absence to visit her mother, who was ill, he took the opportunity to criticize her affiliation and sympathy with the UE (R. 369–370). Although he finally granted the leave requested, Foreman Gervasi spoke to Monjar for about 1 hour telling her of the "error" of her ways "in relation to the Association (C. E. A.)" and that she should not have "come out for the C. I. O." as she had (R. 370). Gervasi declared to Monjar that it was "unfortunate" that she "had made the record at Cannon" which she had "in relation to union activities" and that because of her "attitude," it "was very hard for the company to grant * * * (her) any favors" (R. 370).

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With the renewal of organizational activity by UE during 1942, President Cannon distributed among the employees several letters which attacked that organization and gave further support to CEA.[17] Thus, in reply to a letter, dated April 24, 1942, from Harry Bridges, Regional Director for the CIO in California, expressing the desire to confer at sometime in the future with respondents, President Cannon, in a letter dated May 8, 1942, belligerently charged that CIO's "electrical division tried to take * * * (his) little company like Hitler took the low countries. First by Fifth Column methods of infiltration and then by force when * * * (the company's) defences were weakened by large additions of new help who did not know what it was all about" (R. 182, 671–673). President Cannon warned that "subversive moves to molest this plant will meet with an accounting to the collective front of the United States Army, Navy, Air and Signal Corps." He further declared that only the influx of new employees had enabled the CIO to gain "a foot hold at all" among respondents' employees, that respondents' plant would be "no 'push-over'," that "our little group now have in their hands means of expressing and representing themselves on a basis that is thoroughly democratic for those involved," and that he and Bridges had "nothing in common to discuss" (R. 672–673).

President Cannon's letter to his employees, dated May 29, 1942, which respondents distributed to the employees at the time, is characterized by the violence

[17] These letters are set forth in the record at pages 671–689.

of respondents' attack upon the CIO Director, Bridges (R. 186, 674–675).

In contrast with his manifested hostility to the efforts of UE to organize respondents' employees, President Cannon in a subsequent letter to the employees clearly expressed his approval of CEA declaring that "the Association has not been given credit for the work it has done" and that "the boys in the Association have fought your battle loyally and sincerely" and urging that they "should be shown some evidence of appreciation by you for their efforts" (R. 196, 689–693).

On September 21, 1942, UE filed with the Board a petition for certification as bargaining representative of respondents' employees (R. 47; Bd. Ex. 68A), which culminated in a Board-conducted election held on January 25, 1943 (R. 47; Bd. Ex. 68K). Following the filing of this petition, respondents continued to distribute letters among the employees attacking the CIO. On November 3, 1942, respondents distributed for a second time among the employees President Cannon's letter of May 29, 1942, in which he had directed abusive language against Bridges and "eagle-beaked foreigners" in American labor (R. 186, 676–685).

A letter dated November 11, 1942, signed by President Cannon and distributed among respondents' employees to whom it was addressed, warned the employees not to be distracted from the war effort, for "when the soldier boys come home there will not be enough rat holes or raid shelters to conceal the racketeers, ex-convicts and foreigners who have been ex-

ploiting American labor, from the vengeful wrath of our fighters" (R. 186, 685–689). President Cannon declared that he, "personally," was "through with pussy-footing" and he spoke of the "deluge of obnoxious blackguarding bulletins, defamatory remarks over loud-speaking band wagons, treacherous propaganda from stooges employed within our own organization" to which he had in the past submitted (R. 688). In contrast, however, he promised in regard to the CEA that "we can accomplish even better results than those already obtained" inasmuch as the employees had "passed judgment on a new set of bylaws" that would enable them to govern their own affairs (R. 688).

(3) Respondents' interference with, support to, and domination of, CEA after the Board-conducted election of January 1943

As previously stated (*supra,* p. 25, on September 21, 1942, UE filed with the Board, pursuant to Section 9 of the Act, a petition for investigation and certification of representatives for respondents' employees. The election was held on January 25, 1943, and CEA again polled a majority (R. 47; Bd. Ex. 68K). Subsequently, the Board in a Supplemental Decision and Certification, issued on April 12, 1943, certified CEA as bargaining representative of respondents' employees and overruled objections filed by UE alleging that respondents had illegally assisted CEA prior to the election (R. 47–48; Bd. Ex. 68P).

On May 5, 1943, respondents and CEA executed a new agreement to be effective for 1 year or the dura-

tion of the war "whichever is longer," and subject thereafter to termination upon 30 days' notice (Bd. Ex. 29, p. 5). Respondents agreed that, when requested by CEA, it would discharge employees who had been expelled from CEA membership for failure to pay dues (Bd. Ex. 29, pp. 7–8).[18] The contract also provided for the dismissal of employees expelled from CEA for reasons other than the nonpayment of dues, but in such cases an arbitration procedure was made available if respondents disputed the propriety of the reasons upon which CEA based the expulsion (Bd. Ex. 29, p. 8).[19] The agreement contained provisions relating to wages, hours, and other working conditions and it also provided that CEA might use the cafeteria "for department and shift meetings" (Bd. Ex. 29, p. 20). Provision was made for respondents' deducting CEA dues from the wages of employees authorizing this check-off procedure (Bd. Ex. 29, p. 12).

Following the Board-conducted election held on January 29, 1943, respondents continued to intervene in the affairs of CEA. In the spring of 1943, Caffarel, who was then president of CEA, was told by President Cannon that Cannon "didn't approve of Mr. Lewis being the Association attorney because * * * the employees were paying him out of their wages" (R. 539). At the next CEA board meeting,

[18] Compare President Cannon's statement that the plant would "never be operated as a closed shop," *supra*, p. 10.

[19] Pursuant to the closed shop provision of the contract respondents, upon request of CEA, discharged seven employees on June 12, 1943, and two more on July 29, 1944, following their expulsion from that organization (*infra*, pp. 34, 39).

Richard Franklin, business agent of the CEA, and John Gibson, a member of the board, proposed that Lewis be dismissed and a CEA board approved the motion (R. 539–540). In about May 1944, Robert Cannon, then vice president of the corporation (R. 599), similarly intruded in the affairs of CEA. At that time, employee Rachel McBurnie had been elected as a member of CEA's board of directors (R. 452). A few days before she was sworn in, John Gibson, then president of CEA, told McBurnie that Vice President Robert Cannon wanted to see her in his office (R. 452–453). Gibson then took her to see Vice President Cannon, who asked her "how * * * (she) happened to be elected on the Board of Directors" (R. 454). When McBurnie replied that "the girls wanted a woman on the board," Gibson asked whether McBurnie was "sure" she was not elected to the Board of Directors "to oust Richard Franklin" who was then CEA's business agent (R. 454). When McBurnie answered that she knew nothing about any such ouster, Vice President Cannon declared that CEA and respondents had always "got along very nice" and that "Mr. Franklin had made a good business agent" (R. 454).

Actually, opposition against the continuance of Franklin as business agent existed among several CEA officers and at a meeting of the Board of Directors held in the plant cafeteria on the day following Vice President Cannon's interview with McBurnie, a motion for Franklin's ouster was carried by a vote of four to three (R. 456–458). Gibson and other Board

members who supported Franklin called for a referendum by the CEA membership (R. 459–460). Shortly thereafter, an election was held in which the members of CEA were called upon to vote whether they wished to retain Franklin and Gibson or the CEA directors who had voted for the ouster of Franklin (R. 463–464). As in the case of all CEA elections (see n. 16, p. 22, *supra*), this election was held in the plant cafeteria (R. 465). The polls were open from 7 a. m. until 8:30 p. m. (R. 465). An employee who worked on a machine in one of the departments "sat there all day" guarding the ballot box in the plant cafeteria, and one of respondents' guards, dressed on this occasion in a business suit, also watched the box (R. 466). At the closing of the polls, a number of employees participated in the counting of the ballots, which took place in the plant cafeteria (R. 467–468). At least two of these employees were absent from the shift at which they would normally have been working at that time (R. 466–467). One of these, McBurnie, had received permission from her foreman to leave her work for the purpose of counting the ballots (R. 466). Although the counting lasted for about an hour and a half until shortly after 10 p. m. (R. 467), no deduction was made from McBurnie's pay for the time thus spent away from her work on CEA business (R. 469). When the ballots were counted, Cal Cannon, manager of respondents' cafeteria (R. 563), and the guard who had watched the ballot box during the day, placed the box and ballots in Cal Cannon's office in the cafeteria (R. 468).

From other evidence, as well as the several instances described above, the Board found (R. 51), that respondents at all times permitted employee representatives of CEA to attend to the affairs of that organization on company time, without loss of pay." Thus, in the fall of 1943, the CEA shop stewards on McBurnie's shift held a meeting in the plant cafeteria on company time at which they elected McBurnie as chief steward for that shift. Although McBurnie was absent from her work for a half hour to attend this CEA meeting, no deduction was made from her pay for the time thus spent away from her work on CEA business (R. 448–450). Other meetings of CEA officials were also held in the plant during working hours to discuss such things as grievances and to plan social events (R. 514, 517, 519).

Employee Caffarel, who served as CEA president from November 1942 until March 1943 (R. 510) and thereafter as treasurer until December 1943 (R. 514–515), absented himself frequently from his work throughout his incumbency to perform his duties as CEA official without any loss in pay (R. 513, 517, 519). Indeed, Caffarel's absences from the plant on CEA business were of sufficient frequency to necessitate respondents' issuance to him of a pass which entitled him to enter and leave the plant at any time without being questioned by the guards or others (R. 511–512). Respondents issued such a pass to at least one other member of the CEA board of directors, Bill Attaway (R. 511). Other CEA officials were permitted to devote Company time to CEA business, and also, as in

the case of Caffarel, to leave the plant in connection with such matters (R. 513, 559–561).

During John Gibson's incumbency as president of CEA the use of Company time by CEA officials in connection with the affairs of their organization became so frequent that respondent sought to curtail it somewhat. Thus, Plant Superintendent Hawkinson entered into an arrangement with Gibson whereby he was permitted to absent himself from work without loss of pay to conduct CEA business for not more than 2 hours each day (R. 558–559). In accordance with this arrangement, Gibson conducted CEA business on company time 4 or 5 days each week (R. 559).

In March 1945, CEA ceased to be active as a labor organization of respondents' employees. On March 16, 1945, and again on April 4, 1945, shortly before the hearing in this proceeding, CEA advised respondents by letter that its members had voted on March 13 to become members of Mechanics Educational Society of America, Local 75, and that henceforth the Society was the exclusive bargaining agent for respondents' employees (R. 614, 714–717). The letter also advised that the CEA board of directors had dissolved that organization, requested that the current dues check be made payable to the Society, and asked that respondents meet with officers of Local 75 of the Society in order to negotiate a new agreement (*ibid*). Accordingly, respondents executed an agreement with the Society on April 10, 1945 (R. 616). On April 23, 1945, however, the national secretary of the Society notified respondents by telegram that the contract was

cancelled (R. 608, 706–707). This telegram was read over the public address system in the plant and copies of it were posted on the bulletin boards in the plant (R. 618–619). No further developments involving the relationship between respondents and CEA or the Society occurred between the time of the Society's cancellation of the contract and the hearing before the Trial Examiner in this proceeding.

(4) The Board's conclusions with respect to the CEA

The Board, after reviewing the foregoing facts, concluded that respondents had dominated and interfered with the formation of CERA and CEA, interfered with the administration of CEA and contributed financial and other support thereto in violation of Section 8 (2) of the Act, and had thereby interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act (R. 5, 66–67).

3. Respondents' discharges in violation of Section 8 (3) of the Act

a. *The discharges pursuant to respondents' contract with CEA*

(1) The discharges of June 12, 1943

As we have shown (*supra,* p. 21), on May 5, 1943, respondents entered into a collective bargaining contract requiring membership in CEA as a condition of employment and providing that respondents, at CEA's request, would dismiss employees expelled from CEA because of dues delinquency (Bd. Ex. 29, p. 8). The agreement further provided that in the case of em-

ployees expelled from CEA for reasons other than dues delinquency, respondents, when they did not agree with the reasons furnished by CEA, might take requests for discharge based upon such expulsions to arbitration (Bd. Ex. 29, pp. 7–8).

On May 26, 1943, the executive board of the UE local, composed of Erma A. Evenstad, Vivian Sullisan, Monna M. Nye, Joan Lawrence, and Clarence Youngberg, as well as three other employees not involved in this proceeding, distributed a letter among the employees asserting the intention of the signers not to join CEA (R. 407–409, 415–416, 418–419, 631, 694). A few days later, CEA served each of the signers with a complaint accusing them of violating the CEA bylaws in four particulars (Bd. Ex. 46; R. 409, 419). The complaint advised that, on June 8, 1943, a hearing would be held on the charges and that failure to pay back dues which they owed would lead to "action on that score" (Bd. Ex. 46). On June 8, 1943, the employees who had signed the original manifesto against CEA (with the exception of one of the persons not here involved) distributed a second letter, stating that they would not attend the CEA hearing (R. 410–411, 419–420, 436, 631, 695).

On the following day, CEA advised respondents by letter that the seven signers of the second letter had been expelled from CEA because of infractions of its bylaws and because of dues delinquency, and that three other employees, including Ada Lish and Elise Hunt, involved in this proceeding, were also expelled because of dues delinquency (R. 550, 707–708).

CEA requested that these employees be discharged by respondents within 7 days in accordance with its agreement dated May 5, 1943 (*ibid.*) Accordingly, on June 12, 1943, respondents pulled the time cards of the seven employees here in question and gave each of them a discharge slip advising them that they were dismissed "as per agreement" (R. 382–383, 401, 411–415, 417, 420–423, 430–438). Superintendent Hawkinson advised employee Sullivan, who had been absent on June 12, 1943, that she was discharged at CEA's request for signing the open letter of May 26, 1943, which the UE executive committee had distributed (R. 414, 417–418). Of the seven employees here involved, only three, Monna Nye (R. 381–400, 418–423), Vivian Mary Sullivan (R. 400–418), and Clarence William Youngberg (R. 424–437), testified. Counsel for respondents, however, stipulated that all seven of the employees discharged on June 12, 1943, were discharged under similar circumstances and for the same reasons (R. 424–425, 437–438).[20]

(2) The discharge of Armant

As noted above (*supra,* p. 20) Armant had been an active UE member, and had declined to join the CEA (R. 287–288). After the election on September 9, 1941, however, which CEA won, Armant joined CEA and some months later he was an unsuccessful

[20] Although Louis Tournie was also included in this stipulation, the uncontradicted testimony shows that he voluntarily left the respondent's employ on June 18, 1943, and was not one of those discharged on June 12, 1943 (R. 418, 632–633).

candidate for the CEA board of directors (R. 290–296). Armant stopped his activity as UE shop steward after this election, but he continued occasionally to attend CIO meetings and never severed his connection with UE (R. 341–342).

In June 1942, Armant and another employee, Harmon Fellows, went to the office in the plant of Army Inspector Brown and gave him evidence indicating that some employees had been required to pay fees to private employment agencies in order to secure jobs with the company (R. 296–298). Ned Mandella, president of CEA, was implicated in this matter since applicants for jobs were cleared with him (R. 298–299, Bd. Ex. 36). Floyd Cate, a member of the CEA board of directors saw Armant and Fellows in the office of the Army inspector (R. 298, 300). Several days later Armant and Fellows received letters signed by Mandella notifying them that "due to unpleasant circumstances which have arisen" they were to be present at the CEA office on August 4, 1942 (R. 301–303, 693–694). Armant did not receive the letter until August 5, and pursuant to a telephone conversation with Mandella, he arranged to be present at the CEA office on August 7 (R. 303–304).

The CEA board of directors including Mandella were present at the CEA office on August 7 (R. 304). Mandella read the charges against Armant which included charges of union solicitation on company time in the rest room, giving the Army inspector information regarding employment in the plant, and making false statements against CEA (R. 305–306).

The CEA officers told Armant that he was guilty of the charges and would be discharged (R. 309, 336). Thereafter in a letter dated August 17, 1942, CEA asked the respondents to discharge Armant and Fellows as of August 19, 1942. On about that date, when Armant was entering the plant, his card was not in the rack (R. 309–310, 313). He telephoned Mandella at the CEA office who told him that he was discharged (R. 311). Armant then communicated with the CIO which called in the services of a Federal Conciliator (R. 310, 312). Thereafter on August 27, 1942, Armant broadcast over the radio under the sponsorship of UE an account of his discharge (Bd. Ex. 48, R. 335, 340–341). About 2 weeks after his discharge, Armant was reinstated and received back pay for the time lost (R. 313).

Armant returned to work on September 12, 1942 (R. 313). A half hour after Armant began work on that day, two CEA directors, Bereznak and Barnett, walked through the department talking to employees. Shortly thereafter a large group of employees followed these two men into the plant cafeteria (R. 314, 330). Hawkinson, then the plant superintendent, found Mandella addressing 100 to 150 employees in the cafeteria (R. 580–581, 585). Mandella told Hawkinson that Armant "was disqualified from working in there and he wanted him to be removed" (R. 585). Hawkinson told the employees to return to work but they refused (R. 586) and Mandella stated that the employees were "out on strike and would not go back to work as long as Mr. Armant was in the plant" (R.

597). Robert Cannon, respondents' vice president who had accompanied Superintendent Hawkinson to the cafeteria, then stated that respondents would send Armant out of the plant that evening and arbitrate the case (*ibid.*).

Armant again advised UE what had occurred (R. 317). About three days later, UE notified Armant that the Federal Conciliator advised that Armant should return to work (*ibid.*). When on September 15, 1942, Armant returned to the plant, he was told there would be an arbitration proceeding (R. 318–319). President James H. Cannon testified, however, that the proceeding which was held was not an arbitration proceeding, but that since Armant and Fellows had previously been discharged on CEA's word without investigation by respondents, the hearing on September 15, 1942, was held pursuant to the agreement with CEA to determine whether the CEA complaints against Armant and Fellows justified their discharge (R. 601–602). Subsequently, Armant was advised by the Federal Conciliator Livingston that he was discharged, and that he (Livingston) could do nothing about it (R. 323–324). This constituted the only notice of discharge which Armant received and respondents never advised him directly about this (R. 324). He has not worked for the company since that time (R. 325).

Thereafter Armant sued CEA and respondents because of his discharge (R. 325, Bd. Ex. 73, 74). The State Court found that CEA had expelled Armant from membership without following the procedure re-

quired by the CEA constitution and that he was still a member of CEA. The Court, however, also found that respondents had not conspired with CEA to expel Armant from membership in CEA and refused to enter a judgment against respondents (Bd. Ex. 73, 74). Respondents refused to rehire Armant when he applied for reinstatement on the strength of his judgment annulling the CEA expulsion proceedings (R. 325–329). In their brief before the Board (a true copy of which has been certified to this Court) respondents argued that they "were faced with the absolute necessity of discharging Mr. Armant upon his being rejected as a member of CEA or upon his dismissal from membership in CEA * * *."

(3) The discharges of Caffarel and Maynard

Herbert Caffarel began working for respondents in June 1940 (R. 477). For the 2 years preceding his discharge in 1944, he worked as a leadman in the punch press department (R. 525). In the early part of 1941, at Mandella's behest, Caffarel solicited employees to join CERA (R. 479–486). In May 1941, Caffarel became active in the Contact Committee, a labor organization sponsored by respondents to handle grievances (R. 494). He became chairman of that organization and retained that position until the dissolution of the Contact Committee some 3 or 4 months later (R. 494, 507). Caffarel then resumed his activities on behalf of CERA which had by this time assumed the name CEA (R. 509). In November 1942 he was elected to the CEA board of directors (R. 510). Thereafter the board elected Caffarel as president of

CEA (*ibid.*). In March 1943 Florence Maynard succeeded Caffarel as president of CEA and Caffarel was elected treasurer (R. 514–515), serving in that position until December 1943 (R. 515).

In December 1943, John Gibson became president of CEA, Maynard was elected a minor official and Caffarel was defeated (R. 521–522). At that time, CEA was employing Richard Franklin as its business agent (R. 547). Caffarel was opposed to the policies of Franklin and of Gibson (R. 522–523, 548). He had favored the continued employment of one Lewis as attorney for CEA which Franklin and Gibson had opposed (R. 538–540). These differences culminated in May 1944 when a number of CEA directors attempted to effect Franklin's discharge as CEA business agent (R. 457–458). On June 29, 1944, CEA notified Caffarel by letter that a hearing would be held on charges that Caffarel had "spread false rumors" (R. 523–525, 632, 701). Maynard received a similar letter (R. 527–528, 553). As a result of the hearing, the CEA board found Caffarel and Maynard guilty of the charges, but exonerated a third employee, Rachel McBurnie, who had also been charged with violating various CEA rules (R. 533–535). On July 24, 1944, CEA advised respondents that Caffarel and Maynard had been expelled from CEA and in effect requested their discharge (R. 604, 710). Respondents replied requesting information as to the specific charges against these two employees (R. 604, 711). CEA furnished this in a letter dated July 26, 1944 (R. 604, 711–714). On July 29, 1944, respondent's personnel director, Wilcox, gave both Caffarel and Maynard their

final checks (R. 537). Wilcox told Caffarel that respondents were required to comply with the terms of their collective agreement with CEA (*ibid*).[21]

(4) The Board's conclusions with respect to the discharges requested by CEA.

The Board found that each of the ten employees discussed above (the seven discharged on June 12, 1943, and Armant, Maynard, and Caffarel) were discharged pursuant to the request of the CEA, in accordance with the contract between respondents and the CEA (R. 76, 79–80, 83). Having concluded that the CEA was dominated by respondents in violation of Section 8 (2) of the Act, the Board found that the discharges pursuant to the contract with the CEA were in violation of Section 8 (3) of the Act (*ibid.*).

b. *The discharge of George for UE activity*

Alvin L. George was one of the older of respondents' employees, having started as a carpenter for respondents in March 1938 (R. 201). As noted above (*supra*, p. 14) in January 1941, employee Mandella, who then began organizing CERA, asked George to join that organization. Despite Mandella's repeated requests,

[21] Prior to the hearing of Maynard's case on July 1, 1944, Maynard distributed a letter among the employees concerning her views of the controversy with CEA in which she stated, *inter alia*, that she had already tendered her resignation from the respondents (R. 551–554, 702–703). At the time of the hearing, Maynard was a WAC and did not testify (R. 627). In view of the testimony that Maynard's discharge was requested by CEA and that she received her availability slip and final check at the same time as Caffarel (R. 537), the Board found that Maynard was discharged and, despite her own statement, did not resign (R. 83).

George refused to do so (R. 209–216). Within a week or two after Mandella had commenced his solicitation, Plant Superintendent Cromwell called George to his office and asked him why he had not joined the organization "they were forming" (R. 213–214). Plant Superintendent Cromwell explained to George that Mandella's activity "was all right, the company knew about what he was doing" (R. 213) and made an outright request that George "join up" (R. 214). George, however, refused to join CEA. In April 1941, George joined UE and began wearing his union button in the plant (R. 220). A few days thereafter, Superintendent Cromwell asked him about his UE affiliation and when George admitted his membership in that organization, Superintendent Cromwell "got very mad" and walked away (R. 221).

On August 26, 1941, George together with employee Ivan Jensen, spoke over a local radio station in Los Angeles under the sponsorship of UE (R. 221–223), Bd. Ex. 30). George's radio speech was a union pep talk to persuade the employees to join UE. George attacked working conditions at the plant and asserted that Superintendent Cromwell was antiunion and that he promoted his "pets" among the employees (Bd. Ex. 30). A few days after this speech, Cromwell discharged George and Jensen for making the broadcast (R. 223–224). Because of George's discharge and the dismissal of four other active UE members, a strike occurred which lasted for a few hours on September 1, 1941 (R. 227–228). A strike settlement agreement, however, providing for the reinstatement of the discharged members of UE subject to arbitration, put an

end to the strike (Bd. Ex. 32). George and Jensen, who had also been discharged, returned to work and approximately one week later an arbitration hearing was held (R. 229). The arbitrators ordered George and Jensen reinstated and placed upon probation for 45 days (R. 233, 255–256). When, on the day of the award, George told Superintendent Cromwell the terms of the award, Cromwell replied that he would "get" George before the 45 days were up (R. 233–234).

Shortly after the execution of the agreement of October 14, 1941, requiring membership in the CEA as a condition of employment, George joined CEA (R. 240). George continued his CIO membership after his reinstatement, the signing of the union shop contract between CEA and respondents on October 24, 1941, and his subsequent joining of CEA in compliance with that contract (R. 241). In January 1942, Superintendent Cromwell questioned George in the plant cafeteria concerning his opinion of Harry Bridges and another CIO leader. When George expressed a favorable opinion about these men, Cromwell became angry and told George "we would all get our heads cut off some day" (R. 242–243).

In February 1942, employee Gibson, then chairman of the CEA grievance committee, told George that CEA officers were planning to effect the discharge of employee Monjar who after her earlier activity on behalf of CEA had left that organization and become an active member of UE (R. 243–244). George told Monjar what Gibson had reported to him (R. 244–245, 359–361). Within a short time thereafter (R. 361), two employees, Pete Vitale, CEA director and Mon-

jar's leadman, and Andy Bereznak, CEA director, called Monjar from her work and brought her to Superintendent Cromwell's office where they accused Monjar in Cromwell's presence of spreading false rumors (R. 361–363). Cromwell asked Monjar if the charge was true, and Monjar stated what George had reported to her (R. 363). George was then called into the office, and he demanded a hearing (R. 245–247, 363–364). Both respondents' rules and the CEA bylaws prohibited the "spreading of false rumors" (Resp. Ex. 34, p. 13; Bd. Ex. 39, p. 16).

Present at the hearing held in the plant conference room on the following day were Superintendent Cromwell, the CEA board of directors, George, Monjar, and Lewis, the CEA attorney (R. 248, 364–365). Monjar was asked to repeat what George had told her (R. 366). Lewis accused George of having violated the CEA bylaws (R. 248–249). George was then asked who had told him that the CEA officers were planning to effect Monjar's discharge (R. 249). George repeated the conversation which he had had with Gibson and submitted a notarized statement which he had prepared the previous night (*ibid.*). Gibson denied the conversation and Cromwell then told George to return to his work (R. 250). About a week later, Cromwell called George into his office, gave him his check, and told George that he was being discharged for spreading false rumors (R. 250–251). As George was picking up his tools to leave the plant, his foreman, Hintemeyer, told him that he had nothing to do with the discharge and that George was a good worker (R. 252).

Upon the foregoing facts, the Board concluded that although George was ostensibly discharged for violating the company's "false rumor" rule, the rule "was discriminatorily applied to terminate the employment of a UE adherent, on a pretext supplied by CEA, and in conformity with the obvious desires of that organization" (R. 71).

QUESTION PRESENTED

Whether there is substantial evidence to support the Board's finding that respondents violated Sections 8 (1), (2), and (3) of the Act by dominating and supporting employee organizations (the Contact Committee, CERA, and CEA), by discriminating against adherents of affiliated unions, and by discharging employees for union activities or at the behest of a union established and maintained by unfair labor practices.

ARGUMENT

I

Substantial evidence supports the Board's finding that respondents violated Sections 8 (1) and (2) of the Act by dominating and interfering with employee organizations

A. Respondents' domination and support of the Contact Committee

The Board's finding that respondents had unlawfully supported, dominated and interfered with the formation and administration of the Contact Committee is supported by undisputed evidence. As we have shown (*supra*, pp. 7–12) respondents initiated the Committee, prescribed its structure, held elections and meetings of the Committee in the plant conference room during

working hours and promised the employees that if desirable, it would furnish paid clerical help and pay Committee members if their duties became burdensome. President Cannon, the active head of the Corporation, or his son, Vice President of the Corporation, attended the meetings of the Committee. In the open letters to the employees and in his correspondence with the UE, President Cannon gave further support to the Contact Committee by making manifest to the employees the marked disparity in attitude and treatment accorded to the rival labor organizations (*supra,* pp. 7–12). Since, as we have seen (*supra,* p. 12), there was no provision for meetings of the general body of employees, respondents' employees had no opportunity as a group to express their approval or disapproval of the Committee or to exercise any control over the Committeemen. That the Contact Committee was not the outgrowth of a spontaneous desire of respondents' employees, but from its very inception existed in violation of Section 8 (2) and (1) of the Act, requires no further argument. *N. L. R. B.* v. *Southern Bell Telephone & Telegraph Co.,* 319 U. S. 50, 55, 58; *N. L. R. B.* v. *Security Warehouse & Coal Storage Co.,* 136 F. 2d 829, 831–832 (C. A. 9); *N. L. R. B.* v. *Thompson Products,* 141 F. 2d 794, 796–797, 799 (C. A. 9); *N. L. R. B.* v. *Northwestern Mutual Fire Ass'n.,* 142 F. 2d 866, 868 (C. A. 9), certiorari denied 323 U. S. 726; *N. L. R. B.* v. *Wm. Tehel Bottling Co.,* 129 F. 2d 250, 252–253 (C. A. 8).

B. Domination, interference, and support of CEA

As previously noted (supra, p. 32), the Board concluded upon the entire record that respondents had,

"since on or about January 1, 1941, dominated and interfered with the formation of CERA and the Cannon Employees Association, interfered with the administration of the Cannon Employees Association and contributed financial and other support thereto" in violation of Section 8 (2) of the Act, and had "interfered with, restrained and coerced their employees in the exercise of the rights guaranteed them in Section 7 of the Act" (R. 66–67). These findings are amply supported by the evidence summarized above (*supra,* pp. 13–32).

At the very outset of Mandella's efforts to organize CERA "to keep out the CIO," he received the active support of Plant Superintendent Cromwell who advised employee Alvin George that the organization would be a "company union," assured him that respondents knew what Mandella was doing, and urged him to join (*supra,* p. 15). Respondents permitted the CERA, moreover, to hold its first and only election on company property and although the voting was conducted on company time, employees thus absent from their work suffered no loss in pay (*supra,* pp. 15–16). Further, CERA was allowed to publicize its activities and news of the impending election by postings on the bulletin board located near Superintendent Cromwell's office. Although CERA's founders professed that they were organizing a recreation group, the record contains no indication that it ever functioned as a recreational club and in view of Mandella's original solicitation avowedly "to keep out the CIO," Superintendent Cromwell's above-mentioned conversation with George, and the other support respondents gave

CERA, it is clear, as the Board found (R. 61), that CERA was "organized with the knowledge and consent of management as the forerunner of a labor organization designed 'to keep out the CIO.'"

CEA, moreover, was the direct successor and in fact a continuation of CERA. The CERA officers incorporated CEA within a few weeks after their election as the governing body of CERA. Shortly thereafter, in April 1941, these same officers voted to change the name of CERA to CEA. With the exception of two employees who resigned from the group of officers, the CEA officers, including Mandella, continued as officers of CEA. The general membership of CERA did not participate either in the change or in any election of new officers. Until July 1941, CEA continued to use the CERA membership cards. President Cannon's testimony that "CEA started to organize" as CERA (R. 603), confirms the Board's conclusion that CEA was the successor of CERA (R. 62).

During 1941 and 1943 when CEA and UE were competing to organize respondents' employees, respondents affirmatively assisted CEA through the sharply contrasting treatment accorded to these two labor organizations. Respondents' rule forbidding solicitation for any organization on company time and premises [22] was discriminatorily applied in that in practice it was directed solely against UE activity. Although CEA adherents engaged in organizational activity on

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[22] Because of the breadth of the prohibition the rule of itself, quite apart from its discriminatory application, constituted an illegal interference with the organizational rights of the employees. *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793.

behalf of CEA both before and after the promulgation of this rule, and although it is clear from Monjar's and Olsen's CEA activity in Foreman Gervasi's presence on several occasions and from Superintendent Cromwell's earlier awareness of CEA purposes and activity that respondents were aware of such CEA solicitation, the record contains no instance of action taken against any CEA adherent for violation of the rule. On the other hand, the far less flagrant violation of Wiley, a UE steward, was punished by prompt discharge.

In the week or two preceding the September 1941 election, blasts of music from loudspeakers on the roof of the plant prevented the effective use of UE's sound truck during the change of shifts. In striking contrast to the opposition thus shown to UE is respondents' action immediately prior to the election in permitting CEA literature to remain on the time clock in the plant. Further demonstrating the contrasting treatment accorded the proponents of the competing unions is respondents' action in requiring Monjar to choose between writing for UE and continuing as an editor of respondents' house organ, while subsequently respondents in six instances permitted employees writing for the CEA News to continue as members of the Cannoneer staff.

Other evidence of respondents' contrasting treatment of UE is to be found in Foreman McClung's conduct in ordering two employees to take off their CIO buttons on the day following the September election, in Foreman Gervasi's prolonged conversation with Monjar, then active in UE, concerning her

attitude toward the CIO, in Gervasi's frank statement that respondents' treatment of her depended upon her attitude toward union activity, in Superintendent Cromwell's displays of anger to George on two occasions because of his membership in and sympathy for UE, and, ultimately, in respondents' discharge of George because of his UE activity.

Finally, it should be noted that although President Cannon unequivocally declared in his June 3, 1941, letter to the employees that "the plant will never be operated as a 'closed shop' by any organization" (R. 660), in October 1941 respondents and the CEA entered into a contract which made membership in that organization a condition of employment. Respondents have made no effort to explain their change of position as to a closed shop on any basis other than the nature of the organizations involved.

Respondents' conduct summarized above, replete with instances of contrasting treatment of competing unions and assistance to CEA, clearly evidences a violation of Section 8 (2) and (1) of the Act. *N. L. R. B.* v. *Southern Bell Telephone Co.,* 319 U. S. 50, 58; *N. L. R. B.* v. *Link-Belt Co.,* 311 U. S. 584, 589; *N. L. R. B.* v. *Bradford Dyeing Assn.,* 310 U. S. 318, 333–337; *N. L. R. B.* v. *Idaho Refining Co.,* 143 F. 2d 246, 248 (C. A. 9); *N. L. R. B.* v. *Thompson Products,* 141 F. 2d 794, 796–797 (C. A. 9); *N. L. R. B.* v. *J. G. Boswell Co.,* 136 F. 2d 585, 593 (C. A. 9); *N. L. R. B.* v. *Germain Seed & Plant Co.,* 134 F. 2d 94, 97–99 (C. A. 9); *N. L. R. B.* v. *Northwestern Mutual Fire Assn.,* 142 F. 2d 866, 868 (C. A. 9), certiorari denied 323 U. S. 726.

Respondents' support of CEA continued unabated following the election on January 25, 1943. As before, respondents permitted CEA to hold elections of its officers on company property and furnished bulletin boards in the plant for the use of CEA. The contract of May 5, 1943, specifically obligated respondents to furnish six bulletin boards in the plant for CEA and provided that respondents would permit the use of the cafeteria for CEA "departments and shift meetings" (Bd. Ex. 29). The CEA board of directors and shop stewards also used the cafeteria during working hours to conduct CEA business. On two occasions, described above (*supra,* pp. 28–29), the Cannons intervened to influence the action of the CEA board of directors on matters related to the internal affairs of that organization, thereby exercising domination over it. In addition, respondents during one period had a representative of management, Foreman Drouet, actually sitting on the Board of Directors of CEA (*supra* p. 21). Respondents, moreover, permitted CEA adherents to conduct CEA business both on and off company property during working hours without loss of pay, and institutionalized this practice by the issuance to CEA officers of passes permitting free egress from and ingress to the plant. This conduct like respondents' earlier support constituted interference and support of the CEA in violation of Section 8 (1) and (2) of the Act. See particularly the *Southern Bell, Idaho Refining, Thompson Products,* and *Germain Seed* cases, *supra.*

Thus the record, considered as a whole, furnishes ample support for the Board's finding that respond-

ents dominated and supported the CEA in violation of Sections 8 (1) and (2) of the Act.[23]

Respondents contended before the Board that the Board's action in certifying the CEA following the election of January 25, 1943, precluded it from examining respondents' conduct prior to the 1943 certification in the instant proceeding. A similar contention was squarely rejected by the Supreme Court in *Wallace Corp.* v. *N. L. R. B.,* 323 U. S. 248, 253–255, where the Court expressly held that the Board "was justified in considering evidence as to (the employer's) conduct, both before and after the settlement and certification" (323 U. S. at 255). See also *N. L. R. B.* v. *Gilfillan Bros.,* 148 F. 2d 990, 991, where this Court, relying on the *Wallace* case, stated that "The dominating acts before the certification, followed by such domination thereafter, may be considered by (the Board)."

Equally without merit was respondents' contention to the Board that the failure of the regional director to issue a complaint based upon the post-election

[23] Since the conduct described above fully supports the finding of domination and support, there is no occasion to consider whether certain statements of President Cannon and other supervisory officials, upon which the Board also relied, fall within the category of "views, argument, or opinion" so as not to be evidence of an unfair labor practice under Section 8 (c) of the Act as amended if they contained no threat of reprisal or force or promise of benefit. Assuming, *arguendo*, that Section 8 (c) would legalize statements such as these, the validity of the Board's findings is unimpaired since they are amply supported by the conduct described above. See *N. L. R. B.* v. *Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 662 (C. A. 2). The Board's decision in the instant case was rendered before the Act was amended, and at that time its reliance upon respondents' statements was unquestionably appropriate.

charges of the UE prevented the Board from subsequently considering evidence as to respondents' illegal conduct prior to the date of the UE charges. As the Board stated (R. 56–57), "Nonaction by the Regional Director provides no indication of a ruling upon the merits." See *N. L. R. B.* v. *Baltimore Transit Co.,* 140 F. 2d 51, 54–55 (C. A. 4), certiorari denied 321 U. S. 795; *N. L. R. B.* v. *Phillips Gas & Oil Co.,* 141 F. 2d 304, 305–306 (C. A. 3). In any event the Board's findings that respondents illegally dominated and supported the CEA are fully supported by the evidence relating to respondents' conduct subsequent to the 1943 certification and UE charge, as well as by the evidence relating to prior conduct.

II

Substantial evidence supports the Board's finding that respondents discharged 11 employees in violation of Section 8 (1) and (3) of the Act

A. Discharges made pursuant to the union shop contract with the CEA violate Section 8 (1) and (3)

The Board found that respondents discharged ten employees [24] at the request of the CEA, pursuant to the contract with CEA which required membership in that organization as a condition of continued employment by respondents. The evidence is undisputed that each of these employees was discharged following a request of the CEA. Since, as we have seen (Point I, *supra*)

[24] The seven dischargees of June 12, 1943 (Joan Lawrence, Erma Evenstad, Vivian Sullivan, Monna Nye, Ada Lish, Eloise Hunt, and Clarence Youngberg) and Clarence Armant, Florence Maynard, and Herbert Caffarel.

the CEA was company dominated and supported in violation of Section 8 (2) of the Act, it follows that the discharges made pursuant to the union shop agreement with the CEA were in violation of Sections 8 (1) and 8 (3). *N. L. R. B.* v. *Electric Vacuum Cleaner Co.,* 315 U. S. 685, 694; *The Wallace Corp.* v. *N. L. R. B.,* 323 U. S. 248, 251; *N. L. R. B.* v. *Cowell Portland Cement Co.,* 148 F. 2d 237, 243 (C. A. 9), certiorari denied 326 U. S. 735.[25]

B. George was discharged for union activity in violation of Section 8 (1) and 8 (3)

George was one of the old employees in point of service, having worked for respondents since 1938, and apparently no fault had been found with his work. However, he had been notably reluctant to join the CEA and had long been one of the most outspoken of the UE adherents among respondents' employees. On several occasions, George's pro-UE attitude had incurred the anger of Plant Superintendent Cromwell,

[25] Respondents argued before the Board that although Maynard was discharged after a request of the CEA, the record shows that she had previously resigned. Although Maynard had issued a statement that she had previously "tendered her resignation" (R. 702), there is no other evidence that she did, in fact, resign or that any tendered resignation had been accepted. The CEA requested the discharge of Maynard and Caffarel in a letter (R. 710) over 3 weeks after the "resignation" to which Maynard referred, and the company thereafter requested particulars which the CEA subsequently furnished (R. 711–714). Maynard and Caffarel were then given their final pay at the same time. Under the circumstances "there is evidence from which an inference can be drawn in support of the finding" (*N. L. R. B.* v. *Idaho Refining Co.*, 143 F. 2d 246, 247 (C. A. 9)) that Maynard did not effectively resign but was instead discharged pursuant to the request of the CEA.

who threatened to "get" George (*supra,* pp. 41–42). The immediate cause of George's discharge was his alleged violation of the rule against spreading false reports, a rule contained in the CEA bylaws and in the regulations of the Corporation. The CEA complained of George's violation of its bylaws, and, following a "hearing" before Cromwell, George was discharged by Cromwell, ostensibly for violation of the Corporation's rule. Acting upon the pretext thus supplied by the company-dominated union, George's old enemy was thus enabled to carry out his threat and to rid the plant of one of the strongest UE supporters. In the light of this record, the Board clearly had "reasonable ground to infer" that George's UE activities were the actual cause of his discharge. *N. L. R. B.* v. *Polson Logging Co.,* 136 F. 2d 314, 315 (C. A. 9); see also *N. L. R. B.* v. *Harris-Woodson Co.,* 162 F. 2d 97, 101 (C. A. 4).

CONCLUSION

It is respectfully submitted that the Board's finding are supported by substantial evidence on the record considered as a whole, that its order is valid and proper,[26] and that a decree should issue enforcing the order in full as prayed in the Board's petition.

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[26] Respondents filed only a general exception to the Board's order (R. 105), and its validity is therefore not in issue. *N. L. R. B.* v. *Cheney California Lumber Co.*, 327 U. S. 385, 388–389; *Marshall Field & Co.* v. *N. L. R. B.*, 318 U. S. 253, 255.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to Section 6 (a) an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, Secs. 701–712), as amended from time to time, or in any code or agreement approved

or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

The relevant provisions of the National Labor Relations Act, as amended by Section 101 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8 (c). The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

PREVENTION OF UNFAIR LABOR PRACTICES

* * * * *

SEC. 10 (e). The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings,

including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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